



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPEAL BRIEF FOR THE APPELLANTS

Ex parte Andrew R. WEISENBERGER et al. (Applicant)

MOISTURE REDUCTION AND MOLD AND MOISTURE DAMAGE PREVENTATIVE
SYSTEM AND METHOD IN CONSTRUCTION

Application Number: 10/621,859

Filed: July 16, 2003

Appeal No.:

Art Unit: 3744

Examiner: Chen Wen Jiang

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June 30, 2008



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re the Application of:
Andrew R. Weisenberger

Group Art Unit: **3744**

Serial Number: **10/621,859**

Examiner: **Chen Wen Jiang**

Filed: **July 16, 2003**

Confirmation Number: **1761**

For: **MOISTURE REDUCTION AND MOLD AND MOISTURE DAMAGE
PREVENTATIVE SYSTEM AND METHOD IN CONSTRUCTION**

Attorney Docket Number: **062374**

Customer Number: **38834**

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

June 30, 2008

Sir:

Applicants appeal the May 31, 2007 final rejection of claims 1-5, 7-13, 22 and 24-29.

Following the Notice of Appeal filed on November 30, 2007, the following is the

Applicants (now referred to hereinbelow as "Appellants") Appeal Brief.

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(I) REAL PARTY IN INTEREST

The real parties in interest are the inventors in the subject application which are:

Robert A. Weisenberger and Andrew R. Weisenberger.

(II) RELATED APPEALS AND INTERFERENCES

Appellant knows of no other appeals or interferences proceedings related to the present application.

(III) STATUS OF CLAIMS

Pending claims 1-5, 7-13, 22 and 24-29 stand rejected. Claims 6, 14 and 23 have been cancelled. No claims have been allowed or objected to. The claims on appeal are claims 1-5, 7-13, 22 and 24-29.

IV. STATUS OF AMENDMENTS

An Amendment was filed under 37 CFR 1.111 on October 12, 2004 in which claims 6 and 8-13 were amended. An Amendment was filed under 37 CFR 1.114 on January 24, 2006 in which claims 1, 22 and 25 were amended. Each of these amendments has been entered.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to a method for reducing moisture in a building or a portion of a building under construction.

Independent Claim 1:

With regard to claim 1, a method for reducing moisture within a space in a construction project for the purpose preventing structural damage and/or the growth of mold or mildew to components with the space in the construction project (see, e.g., page 3, lines 28-33), comprising the steps of: determining moisture content level at one or more points within the space in the construction project (see, e.g., page 4, lines 5-15 and step 12 of Fig. 1); and if the moisture level at a selected number of said one or more points is above a threshold, performing moisture removal within said construction project to reduce the moisture level of the space to a value below a level sufficient to prevent structural damage and/or growth of mold or mildew on the components within the space (see, e.g., page 4, lines 16-35; page 5, line 32 to page 6, line 2 and steps 16, 20 and 22 of Fig. 1), further comprising sealing the space of said construction project where said one or more points is located with a vapor barrier to provide an enclosed area for moisture removal (see, e.g., page 5, lines 24-31).

Independent Claim 22:

With regard to claim 22, a process for treating a space within a construction of a new home to preventing structural damage and/or the growth of mold or mildew (see, e.g., page 3, lines 28-33), comprising the steps of: measuring moisture content at one or more locations within the space, wherein said one or more locations are selected from the group of locations consisting of a base plates, a stud and a floor (see, e.g., page 3, lines 28-33; page 10, lines 3-5 and step 12 of Fig. 1), determining whether the measured moisture content meets a threshold indication recommending that drying be performed (see, e.g., page 4, lines 16-35 and step 16 of Fig. 1); positioning and operating within the space one or more drying devices for the purpose or reducing the moisture level within the space and thereby reducing the moisture level in structural components of the space, wherein the one or more drying devices are selected from the group consisting of a dehumidifier, a space heater, and an air moving device (see, e.g., page 4, lines 22-35; page 5, line 32 to page 6, line 2; and steps 20 and 24 of Fig. 1), further comprising the step of substantially sealing the space off with a vapour barrier relative to other space outside of the space being treated (see, e.g., page 5, lines 24-31).

Dependent claim 24

With regard to claim 24, wherein said one or more drying devices are operated for a period of time, whereupon one or more further moisture content readings are taken, and a decision is made whether to continue operating said one or more drying devices

based on whether said one or more further moisture content readings meet the threshold indication (see, e.g., page 5, line 32 to page 6, line 16 and steps 22, 24 and 26 of Fig. 1).

Independent claim 25

With regard to claim 25, a process for testing and treating a space within a construction of a new home to prevent structural damage and/or the growth of mold or mildew (see, e.g., page 3, lines 28-33), comprising the steps of: taking initial moisture content readings at locations within the space (see, e.g., page 4, lines 5-15 and step 12 of Fig. 1), determining whether the measured moisture content meets a threshold indication recommending that treatment is warranted; if the determination is that treatment is warranted (see, e.g., page 4, lines 16-35 and step 16 of Fig. 1), if the determination is that treatment is warranted, positioning one or more moisture reduction equipments relative to the space (see, e.g., page 4, lines 22-35 and step 20 of Fig. 1); substantially sealing the space off with a vapour barrier relative to other space outside of the space being treated (see, e.g., page 5, lines 24-31); activating the one or more moisture reduction equipments for the purpose or reducing the moisture level within the space and allowing said moisture reduction equipments to operate for a period of time (see, e.g., page 5, line 32 to page 6, line 2 and step 22 of Fig. 1), taking additional moisture content readings at locations within the space after the period of time has elapsed (see, e.g., page 5, line 32 to page 6, line 2 and step 24 of Fig. 1), determining whether the measured moisture content meets a threshold indication recommending that further treatment is warranted (see, e.g., page 6, lines 2-5 and step 26 of Fig.

1); if the determination is that further treatment is warranted, allowing said moisture reduction equipments to continue to operated for another period of time (see, e.g., page 6 lines 2-5), thereby reducing the moisture level in structural components of the space (see, e.g., page 6, lines 9-16).

Dependent claim 26

With regard to claim 26, further comprising the step of moving one or more of the one or more equipments to different locations within the space prior to said allowing said moisture reduction equipments to continue to run (see, e.g., page 6, lines 6-8 and step 28 of Fig. 1).

Dependent claim 27

With regard to claim 27, further comprising providing one or more additional moisture removing equipments in said step of allowing said moisture reduction equipments to continue to run (see, e.g., page 6, lines 25-31).

Dependent claim 28

With regard to claim 28, wherein the first mentioned at least one of said one or more drying devices comprises a dehumidifier, and wherein said one or more additional equipments is selected from the group consisting of an air mover, a heater and a dehumidifier (see, e.g., page 6,

lines 25-31).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 1-5, 7, 9, 11, 12, 13, 22, 24, 25, 26, 27, 28 and 29 under 35 U.S.C. §102(b) as being anticipated by the articles entitled “Construction Drying” Munters 2000 (hereinafter “Munters 2000”).

The rejection of claims 8 and 10 under 35 U.S.C. §103(a) as being unpatentable over Munters 2000 in view of Munters (Munters 2000/2001).

(VII) ARGUMENT

Claims 1-5, 7, 9, 11-13, 22 and 24-29 stand rejected under 35 U.S.C. §102(b) as being anticipated by Munters 2000.

Independent Claim 1:

Independent claim 1 calls for *a method for reducing moisture within a space in a construction project for the purpose preventing structural damage and/or the growth of mold or mildew to components with the space in the construction project, comprising the steps of: determining moisture content level at one or more points within the space in the construction*

project; and if the moisture level at a selected number of said one or more points is above a threshold, performing moisture removal within said construction project to reduce the moisture level of the space to a value below a level sufficient to prevent structural damage and/or growth of mold or mildew on the components within the space, further comprising sealing the space of said construction project where said one or more points is located with a vapour barrier to provide an enclosed area for moisture removal.

It is submitted that Munters 2000 fails to disclose or fairly suggest the features of claim 1 regarding *determining moisture content level at one or more points within the space in the construction project*. In the final office action, the Examiner completely failed to indicate the specific portion of the Munters 2000 reference that is being relied upon for teaching this feature of claim 1.

Moreover, while Munters 2000 may bring a concrete slab to specific moisture content (on page 4), Munters 2000 is completely silent with regard to determining moisture content level at one or more points for the concrete slab.

Further, while Munters 2000 may disclose using desiccant dehumidification to remove construction moisture, Munters 2000 is completely silent with regard to determining if moisture contents levels are above a threshold in the concrete slab, and *performing moisture removal within said construction project to reduce the moisture level of the space to a value below a level sufficient to prevent structural damage and/or growth of mold or mildew on the components within the space*.

Finally, with regard to the features of claim 1 regarding *sealing the space of said construction project where said one or more points is located with a vapor barrier to provide an enclosed area for moisture removal*, the Examiner relies on the pictures of “Union Station, Seattle, Washington”, which the Examiner contends has vapour barrier on the working floor and siding and the picture of “San Francisco, California”, which the Examiner contends has plastic sheeting to cover the windows to form a closed building.

However, it is respectfully submitted that the illustrations of San Francisco, California and Seattle, Washington are extremely unclear and therefore it is difficult to ascertain exactly what is disclosed in such figures. Moreover, it is respectfully submitted that such pictures fail to disclose any type of vapor barrier for sealing a space in a construction project where one or more points determined to have moisture content levels above a threshold is provided. In other words, it is respectfully submitted that the Munters reference fails to disclose that the space in which the concrete slab is provided is sealed off by a vapour barrier.

Independent Claim 22:

Claim 22 call for *measuring moisture content at one or more locations within the space, wherein said one or more locations are selected from the group of locations consisting of a base plates, a stud and a floor, determining whether the measured moisture content meets a threshold indication recommending that drying be performed; positioning and operating within the space one or more drying devices for the purpose or reducing the moisture level within the space and*

thereby reducing the moisture level in structural components of the space, wherein the one or more drying devices are selected from the group consisting of a dehumidifier, a space heater, and an air moving device, further comprising the step of substantially sealing the space off with a vapour barrier relative to other space outside of the space being treated.

It is submitted that Munters 2000 fails to disclose or fairly suggest the features of claim 22 regarding *measuring moisture content at one or more locations within the space, wherein said one or more locations are selected from the group of locations consisting of a base plates, a stud and a floor*. In the final office action, the Examiner completely failed to indicate the specific portion of the Munters 2000 reference that is being relied upon for teaching this feature of claim 22.

Moreover, while Munters 2000 may bring a concrete slab to specific moisture content (on page 4), Munters 2000 fails to measure moisture content of the concrete slab and Munters 2000 also fails to suggest that the concrete slab constitutes a base plate, a stud or a floor.

Munters 2000 is also silent with regard to *determining whether the measured moisture content meets a threshold indication recommending that drying be performed; positioning and operating within the space one or more drying devices for the purpose of reducing the moisture level within the space and thereby reducing the moisture level in structural components of the space, wherein the one or more drying devices are selected from the group consisting of a dehumidifier, a space heater, and an air moving device*. That is, the Examiner has failed in the

final office action to specifically point out which portions of the Munters 2000 reference are being relied upon for teachings these features of claim 22.

Finally, with regard to the features of claim 22 regarding *substantially sealing the space off with a vapour barrier relative to other space outside of the space being treated*, the Examiner relies on the picture of “Union Station, Seattle, Washington”, which the Examiner contends has vapour barrier on the working floor and siding and the picture of “San Francisco, California”, which the Examiner contends has plastic sheeting to cover the windows to form a closed building.

However, as noted above, such pictures fail to disclose any type of vapor barrier for sealing a space in a construction project where one or more points determined to have moisture content levels above a threshold is provided. In other words, it is respectfully submitted that the Munters 2000 reference fails to disclose that the space in which the concrete slab is provided is sealed off by a vapour barrier.

Dependent claim 24

With regard to claim 24, it is submitted that the Examiner has completely failed to specifically point out which portion of the Munters 2000 reference is being relied upon for teaching the features of claim 24 regarding *wherein said one or more drying devices are operated for a period of time, whereupon one or more further moisture content readings are taken, and a decision is made whether to continue operating said one or more drying devices*.

Independent claim 25

Independent claim 25 calls for *taking initial moisture content readings at locations within the space, determining whether the measured moisture content meets a threshold indication recommending that treatment is warranted.*

As noted above, while Munters 2000 may bring a concrete slab to specific moisture content (on page 4), Munters 2000 fails to measure moisture content of the concrete slab. As such, it is submitted that Munters 2000 fails to disclose or fairly suggest the features of claim 25 regarding *taking initial moisture content readings at locations within the space, determining whether the measured moisture content meets a threshold indication recommending that treatment is warranted.*

Munters 2000 is also silent with regard to *if the determination is that treatment is warranted, positioning one or more moisture reduction equipments relative to the space; substantially sealing the space off with a vapour barrier relative to other space outside of the space being treated; activating the one or more moisture reduction equipments for the purpose or reducing the moisture level within the space and allowing said moisture reduction equipments to operate for a period of time.* That is, the Examiner has failed in the final office action to specifically point out which portions of the Munters 2000 reference are being relied upon for teachings these features of claim 25.

Finally, it is submitted it is submitted that the Examiner has completely failed to specifically point out which portions of the Munters 2000 reference are being relied upon for

teaching the features of claim 25 regarding *taking additional moisture content readings at locations within the space after the period of time has elapsed, determining whether the measured moisture content meets a threshold indication recommending that further treatment is warranted; if the determination is that further treatment is warranted, allowing said moisture reduction equipments to continue to operated for another period of time, thereby reducing the moisture level in structural components of the space.*

Dependent claim 26

With regard to claim 26, it is submitted that the Examiner has completely failed to specifically point out which portion of the Munters 2000 reference is being relied upon for teaching the features of claim 26 regarding *further comprising the step of moving one or more of the one or more equipments to different locations within the space prior to said allowing said moisture reduction equipments to continue to run.*

Dependent claim 27

With regard to claim 27, it is submitted that the Examiner has completely failed to specifically point out which portion of the Munters 2000 reference is being relied upon for teaching the features of claim 27 regarding *comprising providing one or more additional moisture removing equipments in said step of allowing said moisture reduction equipments to*

continue to run.

Dependent claim 28

With regard to claim 28, it is submitted that the Examiner has completely failed to specifically point out which portion of the Munters 2000 reference is being relied upon for teaching the features of claim 28 regarding *wherein the first mentioned at least one of said one or more drying devices comprises a dehumidifier, and wherein said one or more additional equipments is selected from the group consisting of an air mover, a heater and a dehumidifier.*

It is well settled that:

“A claim is anticipated only if each and every element *as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference.”
Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1567, 7 USPQ2d 1057 (Fed. Cir. 1988).”

As outlined above, the Munters 2000 reference fails to anticipate the features of claims 1, 22 and 24-28, since such reference fails to disclose or fairly suggest each and every feature of these claims.

(VIII) CONCLUSION

For the above reasons, Appellants request that the Board of Patent Appeals and Interferences reverse the Examiner's rejections of claims 1-5, 7-13, 22 and 24-29.

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If this paper is not timely filed, appellants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to Deposit Account No. 50-2866, along with any other additional fees that may be required with respect to this paper.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'TEB', is positioned above the printed name of the attorney.

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TEB/nrp

(IX) CLAIMS APPENDIX

Claim 1. A method for reducing moisture within a space in a construction project for the purpose preventing structural damage and/or the growth of mold or mildew to components with the space in the construction project, comprising the steps of:

determining moisture content level at one or more points within the space in the construction project; and

if the moisture level at a selected number of said one or more points is above a threshold, performing moisture removal within said construction project to reduce the moisture level of the space to a value below a level sufficient to prevent structural damage and/or growth of mold or mildew on the components within the space,

further comprising sealing the space of said construction project where said one or more points is located with a vapour barrier to provide an enclosed area for moisture removal.

Claim 2. The method according to claim 1, wherein said selected number of points is one.

Claim 3. The method according to claim 1 wherein said construction project comprises a residential construction project.

Claim 4. The method according to claim 3 wherein said residential construction project comprises a single family dwelling.

Claim 5. The method according to claim 1 wherein said construction project comprises a commercial building construction project.

Claim 6. (Cancelled)

Claim 7. The method according to claim 1 wherein said moisture removal comprises providing a dehumidifier device to remove moisture.

Claim 8. The method according to claim 7 wherein said moisture removal further comprises providing a heater for heating the space for enhanced moisture removal.

Claim 9. The method according to claim 8 wherein said moisture removal further comprises providing a blower to move air within the space during said providing moisture removal.

Claim 10. The method according to claim 1 wherein said providing moisture removal comprises providing a heater within the space.

Claim 11. The method according to claim 10 wherein said providing moisture removal further comprises providing a blower to move air within the space.

Claim 12. The method according to claim 1 wherein said providing moisture removal comprises providing a blower to move air within the space.

Claim 13. The method according to claim 12 wherein said moisture removal comprises providing a dehumidifier to remove moisture from air within the space.

14-21. (canceled)

Claim 22. A process for treating a space within a construction of a new home to preventing structural damage and/or the growth of mold or mildew, comprising the steps of:

measuring moisture content at one or more locations within the space, wherein said one or more locations are selected from the group of locations consisting of a base plates, a stud and a floor,

determining whether the measured moisture content meets a threshold indication
recommending that drying be performed;

positioning and operating within the space one or more drying devices for the purpose or
reducing the moisture level within the space and thereby reducing the moisture level in structural
components of the space, wherein the one or more drying devices are selected from the group
consisting of a dehumidifier, a space heater, and an air moving device,

further comprising the step of substantially sealing the space off with a vapour barrier
relative to other space outside of the space being treated.

Claim 23. (Cancelled).

Claim 24. The process according to claim 22, wherein said one or more drying devices
are operated for a period of time, whereupon one or more further moisture content readings are
taken, and a decision is made whether to continue operating said one or more drying devices
based on whether said one or more further moisture content readings meet the threshold
indication.

Claim 25. A process for testing and treating a space within a construction of a new home
to prevent structural damage and/or the growth of mold or mildew, comprising the steps of:

taking initial moisture content readings at locations within the space,

determining whether the measured moisture content meets a threshold indication
recommending that treatment is warranted; if the determination is that treatment is warranted,
if the determination is that treatment is warranted, positioning one or more moisture
reduction equipments relative to the space;
substantially sealing the space off with a vapour barrier relative to other space outside of
the space being treated;
activating the one or more moisture reduction equipments for the purpose or reducing the
moisture level within the space and allowing said moisture reduction equipments to operate for a
period of time,
taking additional moisture content readings at locations within the space after the period
of time has elapsed,
determining whether the measured moisture content meets a threshold indication
recommending that further treatment is warranted;
if the determination is that further treatment is warranted, allowing said moisture
reduction equipments to continue to operated for another period of time,
thereby reducing the moisture level in structural components of the space.

Claim 26. The process according to claim 25, further comprising the step of moving one
or more of the one or more equipments to different locations within the space prior to said

allowing said moisture reduction equipments to continue to run.

Claim 27. The process according to claim 25, further comprising providing one or more additional moisture removing equipments in said step of allowing said moisture reduction equipments to continue to run.

Claim 28. The process according to claim 27, wherein the first mentioned at least one of said one or more drying devices comprises a dehumidifier, and wherein said one or more additional equipments is selected from the group consisting of an air mover, a heater and a dehumidifier.

Claim 29. The process according to claim 25, wherein at least one of said one or more drying devices comprises a dehumidifier.

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(X) EVIDENCE APPENDIX

n/a

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(XI) RELATED PROCEEDINGS APPENDIX

n/a